

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JOSE LUIS ACOSTA
Claimant

VS.

IBP, INC.
Respondent
Self-Insured

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Docket No. 214,886

ORDER

Claimant appealed the March 13, 1997, preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Floyd V. Palmer.

ISSUES

The Administrative Law Judge denied claimant's request for medical treatment finding claimant failed to prove he suffered an accidental injury that arose out of and in the course of his employment with respondent. That is the only issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

Whether claimant suffered a work-related injury is an issue that grants the Appeals Board jurisdiction to review a preliminary hearing order. See K.S.A. 1996 Supp. 44-534a.

Claimant claims he injured his right shoulder, right arm, right elbow, right-hand digits, back and sternum area of his body on May 15, 1996, while working for the

respondent. On claimant's alleged date of injury, he was working dehorning cattle in the slaughter area of respondent's packing plant. Claimant operated a suspended hydraulic dehorning machine which cut the horns from the cattle automatically by pressing a button. The machine weighed approximately 30 pounds but was suspended by a cable and counter-balanced which enabled the worker to perform his job without being required to perform heavy lifting. Claimant testified his symptoms in his shoulders, arms, and back worsened as he continued to work. Claimant also testified he notified his boss and the company nurse that these symptoms were a result of his work activities.

Claimant was terminated by the respondent for excessive absenteeism on July 10, 1996. The claimant does not argue or present any evidence that the absenteeism was due to his alleged work-related injuries.

Following claimant's termination, he went to work for a private contractor who contracted with the respondent to provide clean-up services for the packing plant. Claimant worked for the clean-up service until he reapplied and was hired by the respondent using his legal name of Aurelio Chavez. Claimant previously worked for the respondent under the alias of Jose Luis Acosta. Claimant was rehired by the respondent on February 3, 1997, and was terminated again for falsification of his pre-employment medical history questionnaire on February 6, 1997. Before claimant reapplied, he filed on August 15, 1996, an application for hearing requesting workers compensation benefits for the alleged injuries he received on May 15, 1996. Nevertheless, claimant answered all the medical history questions on the pre-employment medical history questionnaire in the negative. After respondent's personnel manager, Rodger Brownrigg, terminated claimant, claimant informed him that since he was being fired he was going to continue to pursue his workers compensation claim.

The Appeals Board finds that whether claimant was injured while working for the respondent hinges on the credibility of the witnesses who testified before the Administrative Law Judge. In this case, all the witnesses testified in person before the Administrative Law Judge at the preliminary hearing. The claimant testified along with three representatives of the respondent; Rodger Brownrigg, personnel manager; Art Tabares, assistant personnel manager; and Jackie Mora, trainer. The Appeals Board finds some deference should be given to the Administrative Law Judge's conclusion in this case because he had the opportunity to assess the credibility of the witnesses. Therefore, the Appeals Board concludes the Administrative Law Judge's finding that claimant failed to prove he suffered an accidental injury that arose out of and in the course of his employment, should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order Denying Medical Treatment entered by Administrative Law Judge Floyd V. Palmer on March 13, 1997, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Diane F. Barger, Wichita, KS
Tina M. Sabag, Dakota City, NE
Floyd V. Palmer, Administrative Law Judge
Philip S. Harness, Director